

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

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**FEB 24 1999**  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b)	)	
Table of Allotments	)	MM Docket No. 98-198
FM Broadcast Stations	)	RM - 9304
(Cross Plains, Texas et al.)	)	

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**REPLY TO OPPOSITION TO MOTION FOR LEAVE TO FILE SECOND  
SUPPLEMENT TO COUNTERPROPOSAL**

First Broadcasting Management, L.L.C., Gain Air, Inc., and KCYT-FM License Corp. ("FBM"), by their respective counsel, hereby submit a reply to the "Opposition to Motion for Leave to File Second Supplement to Counterproposal" filed on February 10, 1999, by Wagonwheel Broadcasting of Santa Anna ("Wagonwheel"). Wagonwheel fails to demonstrate why FBM's supplement, which eliminates a conflict, should not be considered. In support hereof, FBM states as follows:

1. On January 27, 1999, FBM submitted its Second Supplement and Motion for Leave to file the Supplement. The purpose of these filings was to offer an alternative channel at Coleman, Texas in order to eliminate a conflict with the counterproposal filed by Gulfwest Broadcasting Company and Sonoma Media Corp., ("Gulf-Sonoma"). Gulf-Sonoma did not oppose the elimination of the conflict nor the Motion for Leave to file this pleading. Of course, there does not seem to be any apparent reason why it would oppose the elimination of a conflict to its Counterproposal. Yet, Wagonwheel, without explaining how this resolution adversely affects its own interest, feels

compelled to file an opposition. Other than letting FBM know that Wagonwheel is determined to oppose anything that FBM files, Wagonwheel has no legitimate purpose in opposing the Commission's acceptance of a pleading which has no effect on the conflict that previously existed between FBM's proposal to allot Channel 290C3 at Cross Plains, Texas and Wagonwheel's use of Channel 290C1 at Santa Anna, Texas. That conflict no longer exists because in a filing served on undersigned counsel last week, ALALATEX withdrew its interest at Cross Plains, Texas. Thus there is no longer any interest in a Class C3 channel, including Channel 290C3 at Cross Plains by any party. Thus, Wagonwheel's proposed use of Channel 290C2 at Santa Anna can be processed separately unaffected by this proceeding. Thus, there should no longer be any legitimate reason why Wagonwheel should participate any further in the instant rule making proceeding.

2. As for Wagonwheel's objection to the submission of a pleading which resolves a conflict after the comment and reply deadline, the Commission has routinely allowed and encouraged parties to submit proposals after the deadline in order to assist the Commission in deciding the case. As recently as February 12, 1999, the Commission in Pottsboro, Texas, et al., (DA-99-318) issued a Report and Order granting a late filed proposal which settled the case 3 ½ months after the reply period ended. The Commission apparently did not need to justify accepting the filing late because no explanation was given. Rather the Commission recited the filing and adopted the resolution as proposed in the Supplement. Such late filings are routinely accepted.

3. FBM's filing accomplished the same purpose - to eliminate a conflict and thereby assist the Commission in resolving a contested proceeding. Wagonwheel cites no authority for its belief that the Commission should not accept a pleading after the filing period ends which resolves a conflict. The case of Santa Isabel, Puerto Rico 3 FCC Rcd 2336 (1988) cited by Wagonwheel is

unrelated. In that case, there was no resolution of a conflict offered. Rather, there were several attempts by one party to correct prior deficiencies at the expense of another party which had properly filed its proposal. The difference, of course, is that where, as here, conflicts are resolved, no other party's interests are adversely affected. When deficiencies are corrected, other parties' interests can be adversely affected. Wagonwheel has made no attempt to explain how its interest is harmed by the elimination of a conflict between Gulf-Sonoma's proposal and FBM's proposal. Nor has Wagonwheel shown how Commission acceptance of FBM's pleading is contrary to the public interest.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Kay D. Dallosta, a secretary in the law firm of Shook, Hardy & Bacon, do hereby certify that I have on this 24th day of February, 1999 caused to be mailed by first class mail, postage prepaid, copies of the foregoing **"Reply to Opposition to Motion for Leave to File Second Supplement to Counterproposal"** to the following:

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